IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOSE ALFREDO MARTINEZ.	§	
	§	
Plaintiff,	§	
	§	
VS.	§	CIVIL ACTION NO. 15-CV-00271
	§	
	§	
TYSON FOODS, INC.,	§	
	§	
Defendant.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

This is a suit for damages brought by JOSE ALFREDO MARTINEZ, Plaintiff, against TYSON FOODS, INC., Defendant, on the following grounds:

Parties, Jurisdiction, and Venue

1. Plaintiff, JOSE ALFREDO MARTINEZ, is a natural persoon who resides in Bexar County, Texas.

2. Defendant TYSON FOODS, INC. is a Delaware corporation that maintains its principal place of business in Arkansas. Defendant may be served with process by serving its registered agent for service, C.T. Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

3. There is complete diversity of citizenship between Plaintiff and Defendant. The subject matter of the claim exceeds the sum or value of $75,000, exclusive of interest and costs. Accordingly, this court has original jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1332.

4. Venue is proper in the United States District Court for the Western District of Texas—San Antonio Division pursuant to 28 U.S.C. § 1391(a) because this is the District in which a substantial part of the events or omissions giving rise to Plaintiff's claim occurred.

Factual Background

5. In November of 2014, Plaintiff was working as an employee of Defendant in its Seguin, Texas processing plant. At the time, Plaintiff's job required that he lift large tubs of processed chicken tenders and transfer them to a rolling cart. On the processing line on which Plaintiff was working, water used to wash the processed chicken dripped into the tubs, which increased their weight significantly. The tubs would frequently weight in excess of 115 pounds. Plaintiff had on previous occasions notified his supervisors of this problem, but Tyson never made any effort to correct it.

6. On or about November 15, 2014, Plaintiff was performing his job when he lifted a tub that was particularly heavy due to the dripping water. As Plaintiff attempted to lift the tub to the cart, he immediately felt a severe pain in his back. Plaintiff later discovered that he had suffered a disc herniation in his mid to lower back. The injury was so severe that Plaintiff could no longer perform his job. Plaintiff will likely require extensive medical treatment for his back injury.

First Cause of Action: Negligence

7. The actions of Defendant, and its agents and employees, described above constitute negligence on the part of Defendant, in that it committed one or more of the following acts or omissions:

a. improperly trained its employees on how to properly lift and how to avoid repetitive movement injuries;

b. failed to provide its employees proper equipment and safety equipment for them to perform their jobs;

c. failed to implement policies or procedures to avoid injuries to employees such as Plaintiff;

d. refused to enforce policies and procedures concerning employee safety;

e. improperly trained its employees on production line safety, maintenance and injury prevention;

f. improperly supervised its employees concerning production line safety;

g. failed to remedy a dangerous condition on its production line;

h. failed to warn Plaintiff of the danger of performing his job;

i. failed to provide Plaintiff a safe work environment; and,

j. prevented Plaintiff from receiving necessary medical treatment for his injuries.

8. This negligence on the part of Defendant and its employees and agents was a proximate cause of the damages to Plaintiff set forth below. Defendant is liable for the actions of its employees and supervisors under the doctrine of respondeat superior.

9. At all times material to this action, Defendant was a non-subscriber to Texas workers' compensation insurance. Accordingly, Defendant is precluded from asserting traditional common-law defenses including contributory or comparative negligence, assumption of risk, or negligence of a fellow employee. *See* Tex. Lab. Code § 406.033.

Damages

10. As a result of the actions of Defendants described above, Plaintiff has incurred, and will incur in the future, damages for medical expenses, lost wages and loss of wage-earning capacity, physical pain and mental anguish, permanent and temporary impairment, and disfigurement. Plaintiff seeks an award of these damages in an amount to exceed the minimum jurisdictional limits of this Court.

Jury Demand

11. Plaintiff demands trial by jury.

Prayer for Relief

WHEREFORE, Plaintiff prays that Defendant be cited and appear herein, for an early trial by jury, and upon trial, judgment for the following:

a. actual damages in an amount to exceed the minimum jurisdictional limits of this Court;

b. pre-judgment and post-judgment interest at the highest rates allowed by law;

c. costs of court; and

d. general relief.

Respectfully submitted,

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